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Promotion and protection of human rights: human rights situations and reports of special rapporteurs and representatives

Letter dated 15 October 2014 from the Permanent Representative of Myanmar to the United Nations addressed to the Secretary-General

I have the honour to transmit herewith a memorandum on the situation of human rights in the Republic of the Union of Myanmar (see annex).

I should be most grateful if the present letter and its annex could be circulated as a document of the General Assembly, under agenda item 68 (c).

(*Signed*) Kyaw Tin

14-62996 (E) 231014

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Annex to the letter dated 15 October 2014 from the Permanent Representative of Myanmar to the United Nations addressed to the Secretary-General

Memorandum on the situation of human rights in the Republic of the Union of Myanmar

I. Introduction

1. Since the President, U Thein Sein, came into office on 30 March 2011, the Government of Myanmar has launched wide-ranging political, economic and social reforms to fulfil two fundamental needs of the people, namely the establishment of peace, stability and the rule of law and socioeconomic development. This has resulted in significant progress in promoting democratic values and human rights and in national reconciliation and the peace process. An all-inclusive political system with a constitutionally elected Government and a vibrant legislature is now in place. Despite its complexities and challenges, Myanmar is gaining great momentum and moving forward on its path of peaceful democratic transition.

2. These efforts have won the widespread recognition and support of the international community, paving the way for strengthened relations and engagement with the international community at large. In 2014, Myanmar has further elevated its international standing by taking on the important responsibility of chairing the Association of Southeast Asian Nations (ASEAN).

3. Myanmar is opposed to country-specific mandates in principle. Nevertheless, it has always cooperated with the United Nations and its human rights mechanisms. Myanmar is now taking an even more constructive approach to engagement with the international community by addressing the remaining challenges.

4. Despite the unparalleled progress made by Myanmar in its democratization efforts, the issue of Myanmar will once again be considered by the General Assembly, at its sixty-ninth session. Myanmar remains unjustly placed under scrutiny through a country-specific resolution. A growing number of Member States share the view that the time has come to end the consideration of a country-specific resolution against Myanmar.

5. The present memorandum is intended to increase awareness among Member States and the international community about the specific measures taken by the Government of Myanmar to promote and protect human rights values, including freedom of association, freedom of expression, freedom of the media, and about the ongoing democratic reforms.

II. Process of democratic transition

6. The Government of Myanmar is rapidly advancing on the path of peaceful democratic transition that started just over three and a half years ago by setting in motion waves of political and economic reforms.

7. During the first wave of the reform process, the Government transformed the old centralized system into a multiparty democratic system. The first wave was one of peaceful transformation, from military Government to multiparty democratic

system in which all political forces work together to overcome their differences through dialogue in the two houses of parliament (the *Pyiuthu Hluttaw* and the *Amyotha Hluttaw*). Today, over 60 political parties participate in the political process. An inclusive political system has been established that brings all stakeholders into the process through national reconciliation. The first wave of reform has addressed almost all issues of concern to the international community through a culture of dialogue, national reconciliation, the release of prisoners of conscience, the enlargement of the political space and greater freedom of the media, peaceful assembly and association. Given the unprecedented progress made in the peace negotiations, a nationwide ceasefire agreement is expected to materialize in the near future. In today's world of turmoil, Myanmar is one of just a few countries where democratic transition has come about in a peaceful way.

8. The second wave has unleashed an array of economic and social reforms and promoted good governance and private sector development. The national comprehensive development programme, which consists of four five-year plans covering the 20-year period from 2011 to 2031, is central for enhancing economic development and raising the living standard of the people. Private sector development is being facilitated and fortified by improving the institutional infrastructure and the regulatory framework to facilitate business, trade and investment. The Government is focusing on poverty reduction, rural development and the creation of employment opportunities for the benefit of the people. The economic reform measures and a rise in foreign direct investment have resulted in a rosy picture of steady growth: the country's economy grew by 7.3 per cent in 2012-2013 and is projected to grow by 8.7 per cent in 2014-2015.

9. The Government is now consolidating its third wave of reform. It is focusing on laying a firm foundation for a new democratic State and on delivering benefits to the people by fulfilling their needs for socioeconomic development through government ministries at every level. For Myanmar, the most important task at hand is to keep the reforms on track by ensuring peace, stability and national reconciliation.

10. Regardless of the different views held on the pace and scope of its reform process, Myanmar is determined to move forward with the reforms. There will be no turning back. Since democracy in Myanmar is in its infancy, the country, like other countries in transition, is facing numerous challenges. The Government has a long to-do list but low capacity. To see Myanmar become a flawless democracy in just a few years would be to place too high an expectation on the country. Myanmar needs the understanding and the continued support of the international community in its efforts for economic development and capacity-building and for laying a good foundation for a democratic society.

III. Constitutional review process

11. Constitutional review is a crucial step in the transition to a more democratic nation. Myanmar fully recognizes the need to make improvements to the Constitution gradually, in accordance with the relevant provisions. To this end, a 109-member constitutional review joint committee comprising members of parliament, representatives of the military and political parties and other individuals

was set up by the *Pyidaungsu Hluttaw* (the entity consisting of both houses of parliament) in July 2013.

12. The joint committee invited suggestions from a wide range of stakeholders for ways of reviewing the State Constitution. It reviewed over 323,000 suggestions, received from all sectors of society, and submitted a report with suggestions on each chapter to the *Pyidaungsu Hluttaw* on 31 January 2014.

13. On the basis of the report, on 3 February 2014 the *Pyidaungsu Hluttaw* set up a 31-member implementation committee on amending the Constitution, which has since met 39 times and taken into consideration suggestions made by the public, political parties and representatives of ethnic groups. The implementation committee is expected to submit its findings to the *Pyidaungsu Hluttaw* at its current session.

14. In fact, constitutional reforms fall within the purview of the parliament. The Government has stated that it would assist citizens and their representatives in their efforts to amend the Constitution. The constitutional amendment process should take into consideration the agreements reached in the peace process. The constitutional review process is very much alive, reflecting the fact that the Constitution is living, breathing and always evolving. Any change must be made under the right conditions and at the appropriate time, in harmony with society's political, economic and social needs.

IV. National reconciliation

15. The Government of Myanmar is building a peaceful, modern and developed nation, attaching priority to peace and stability and the rule of law. National solidarity and harmony among members of the country's different races is vital for the perpetuation of the Union. Soon after taking office, the President offered an olive branch and invited all ethnic armed groups to participate in peace talks. As a result of the genuine goodwill and the relentless efforts of the Government during the past three years, tangible progress has been made towards national reconciliation.

16. The Government and the armed groups are working hard and are making strong commitments to overcome the remaining differences with a view to signing a nationwide ceasefire agreement as soon as possible. The Union Peacemaking Work Committee is negotiating with a single team, namely the Nationwide Ceasefire Coordination Team, which represents all armed ethnic groups. The Union Peacemaking Work Committee, the Nationwide Ceasefire Coordination Team and the representatives of various political parties have already met twice in 2014. Those meetings have resulted in the formulation of a single draft ceasefire agreement. Once the nationwide ceasefire agreement has been signed, all stakeholders will meet to discuss the drafting of the framework of the political dialogue. At the Union level, the process will serve to strike a comprehensive and lasting peace agreement that will pave the way for bringing to an end the six decades-long conflict. The Government is serious in its commitment to the success of the peace process and is open to discussing all issues except separation and any issue that could undermine sovereignty.

V. Promotion and protection of human rights

17. As part of its reform measures, Myanmar has stepped up its efforts to promote and protect human rights, including by enacting legislative reforms, releasing prisoners of conscience, removing restrictions on political activities, granting greater freedom of expression and assembly and establishing the National Human Rights Commission. Myanmar accords priority to the right to development and has been striving for the equitable and balanced development of the country. Section 347 of the State Constitution stipulates that the Union shall guarantee for its citizens the enjoyment of equal rights before the law and provide legal protection equally.

A. Universal periodic review process

18. The universal periodic review process of the Human Rights Council is the rightful mechanism to take up human rights issues. It enables the international community to act in an objective, prudent and consistent manner, which is why Myanmar participated in the universal periodic review process in January 2011, after having submitted its first national report to the Working Group on the Universal Periodic Review. Of the 190 recommendations it received, Myanmar is in the process of implementing the 78 recommendations it found acceptable. In addition, Myanmar has become a party to several core human rights instruments. On 7 December 2011, it acceded to the Convention on the Rights of Persons with Disabilities and, on 16 January 2012, to the Optional Protocol to the Convention on the Rights of the Child on the sale of children, child prostitution and child pornography. At present, it is seriously considering acceding to the International Covenant on Economic, Social and Cultural Rights and is preparing to submit its second national report to the Working Group on the Universal Periodic Review, in 2015.

B. National Human Rights Commission

19. With a view to further promoting and safeguarding the fundamental rights of citizens, as prescribed in the Constitution, the National Human Rights Commission of Myanmar was first established, by presidential decree, in 2011. The Commission comprises independent experts from all sectors of society, including representatives of the various national races who have earned the respect of their communities. The activities of the Commission include taking action in response to complaints of rights violations filed by people or organizations inside or outside the country and raising awareness about human rights in government ministries and among the general public. The Commission received a total of 1,990 complaints in 2013. In addition to carrying out outreach activities, the Commission goes on field trips and investigates complaints of rights violations and situations in conflict areas. It occasionally issues press statements on its findings, together with recommendations. The Commission is also associated with the activities of the ASEAN Intergovernmental Commission on Human Rights.

20. On 24 September 2014, the Commission was reconstituted, to enable it to function as an independent entity. A law was enacted in March 2014 to bring the Commission into conformity with the Principles relating to the Status of National Institutions for the Promotion and Protection of Human Rights (Paris Principles). Myanmar is one of just a few ASEAN countries to have a national human rights institution.

C. Legislative reforms

21. As part of the intensive process undertaken by Myanmar to review its existing laws, new legislation has been enacted by the parliament, contributing significantly to a legal framework that is in line with the national reform agenda. In just three years, nearly 100 laws have been amended and enacted. A total of 136 laws are in the process of being repealed, amended and replaced so as to be in conformity with the Constitution. In this process, the Government has sought external technical assistance for the drafting of some items of legislation.

D. Freedom of the media

22. Enlarging the space for people to express their views and opinions has been one of the most positive developments of the reform process in Myanmar. Greater media freedom has been granted in the country by abolishing press censorship, permitting the publication of private daily newspapers and enacting new media laws in line with international norms and practices. No restriction is imposed on the use of the Internet in Myanmar. Since press censorship was abolished in August 2012, there has been a mushrooming of weekly journals and private daily newspapers. New laws on printing and publishing and on the media have also been enacted, setting out journalists' rights and responsibilities. Recently, accusations of backtracking in terms of media freedom have been made. The arrests of some journalists were cited but, in fact, those journalists were sentenced not because of their reporting but because of offences they had committed, which included breaking into a restricted area. A press council has also been put into place to ensure liberty and accountability through a checks-and-balances system.

23. With a view to serving the interest of the people through effective media assistance, there are plans to transform State-owned media into public service media. To that end, a public service media law has already been proposed to the parliament for approval. Through this process, State-controlled media will soon be transformed into public service and commercial forms of media.

E. Freedom of association

24. Myanmar has made significant progress in expanding the rights to freedom of peaceful assembly and freedom of association. In line with the spirit of the International Labour Organization (ILO) Convention concerning Freedom of Association and Protection of the Right to Organize (No. 87), a law on labour organization was enacted on 11 October 2011; its related rules were subsequently stipulated on 29 February 2012. That law not only protects the rights of workers but also facilitates industrial relations among workers, employers and the Government.

25. The enactment of the labour organization law has resulted in a rapid increase in the number of trade union-like associations. As at May 2014, 1,101 basic labour organizations, 32 township labour organizations, 2 labour federations and 22 basic employer organizations had been registered and were functioning across the country. Over 60 political parties had registered and were actively participating in the political process.

F. Freedom of assembly

26. Myanmar has also accorded greater freedom of assembly for the first time in five decades with the entry into force, in July 2012, of a law on the right to peaceful assembly and peaceful procession. Since then, people have been able to organize peaceful protests and exercise their right to freedom of peaceful assembly in accordance with the law. An amendment to that law was also enacted, on 24 June 2014, granting the public further freedom of assembly. There have been some cases involving the arrest of some individuals, either because of their involvement in peaceful assembly without permission or for inciting assaults or the violation of laws.

G. Freedom of religion

27. Myanmar is a multi-ethnic and multi-religious country with a long history of peaceful communal coexistence and religious harmony and tolerance. This is reflected in the major cities of Myanmar, where it is common to see Buddhist temples, churches and mosques stand side-by-side and in each other's shadows. Chapter VIII of the State Constitution adequately guarantees, among other things, the fundamental rights of citizens. The State Constitution also guarantees religious freedom and protection to all major religions. The major causes of the recent communal tension are not based on religion but are deeply rooted in a long history of mistrust involving immigration-related factors. Peoples of different faiths are living in harmony in many parts of Myanmar. The Government encourages interfaith dialogues across the country with a view to promoting understanding and trust among different communities. An interfaith conference of the leaders of the five faiths, held in Yangon in October 2013, was attended by religious community leaders.

H. Anti-corruption commission

28. As part of its efforts to promote good governance, Myanmar has become a party to the United Nations Convention against Corruption. In August 2013, an anti-corruption law was enacted, in compliance with the State Constitution and the provisions of the Convention. A law amending the anti-corruption law was also enacted, on 24 July 2014. The law aims to eradicate graft through a transparent Government. Furthermore, it aims to protect the public from losses related to corruption, take effective action against corrupt public officials, improve the country's economic development and attract foreign investment.

29. To put the anti-corruption law into effect, a 15-member commission led by a vice-president was formed in August 2013. The commission's members were chosen by the parliament from a list of former senior civil servants, lawyers, auditors, lawmakers and high-level military officials proposed by the President. Five appointees were chosen from President's list, five others were chosen from among nominees submitted by speakers of the upper house of parliament and another five were chosen from among nominees submitted by speakers of the lower house of parliament.

I. Elimination of forced labour

30. The efforts made by Myanmar to eliminate the use of forced labour through the signing of a supplementary understanding with ILO on 26 February 2007 is another success story. The Ward or Village Tract Administration Law, enacted in

February 2012, captures the spirit of the ILO Convention concerning Forced or Compulsory Labour (No. 29) and criminalizes the use of forced labour. A forced labour complaint mechanism has also been established and Myanmar has been implementing a joint strategy for the elimination of forced labour that was signed with ILO on 16 March 2012. The progress achieved in addressing the issue has led to the lifting of all remaining restrictions placed on Myanmar by ILO.

31. The ratification of the ILO Convention concerning the Prohibition and Immediate Action for the Elimination of the Worst Forms of Child Labour (No. 182), one of the fundamental ILO conventions, is another important step taken by the Government of Myanmar to promote and protect the rights of the child. In addition, the ratification by Myanmar of Convention No. 182 illustrates the commitment of the Government to meeting international labour standards and further promoting and protecting labour rights.

J. Release of prisoners of conscience

32. The release of prisoners of conscience is a prominent manifestation of the progress made in national reconciliation. Since the establishment of the new Government in 2011, a series of amnesties has been granted and thousands of prisoners, including prisoners of conscience, have been released. The President has made every effort to deliver on his commitments to leave no prisoner of conscience in prison through the independent mechanism of a dedicated committee. On 7 October 2014, another 3,073 inmates, including 58 foreigners, were released under the most recent presidential amnesty.

33. Many former prisoners of conscience and labour activists now freely participate in the parliament, political parties, civil society organizations and labour organizations.

K. Bilateral human rights dialogues

34. As Myanmar opens up, the Government has adopted an approach of constructive engagement and dialogue in addressing the remaining issues of human rights. As such, bilateral human rights dialogues have been successfully conducted with the United States of America, the European Union and Japan. The first such dialogue between Myanmar and the United States was held in Nay Pyi Taw in November 2012; the second round is tentatively scheduled for January 2015. The first human rights dialogue with Japan was held in February 2013 and the second in May 2014.

35. During the first human rights dialogue between Myanmar and the European Union, held in May 2014, issues of common interest were discussed with a view to strengthening cooperation to promote and protect human rights and to promote the exchange of best practices in ratifying international conventions and treaties. The dialogue covered a wide range of issues, including political prisoners, freedom of expression, communal tensions, hate speech, economic, social and cultural rights, land rights, business and human rights, labour rights and non-discrimination.

L. Preventing the recruitment of underage children for military service

36. The Government's efforts to address the issue of underage soldiers have led to significant progress being made through the implementation of a joint plan of action

signed by Myanmar and the United Nations on 27 June 2012. The government army is strongly committed to preventing and ending the recruitment and use of underage children for military service. Since the plan of action was launched, there have been no new cases involving the recruitment of underage children, thanks to the introduction of systematic screenings at different levels, in parallel with public awareness campaigns and training programmes for the military. Government officials and the United Nations country task force on monitoring and reporting are meeting regularly to finalize the implementation of the joint action plan over the long term.

37. Every complaint received is verified and every identified underage child in the service is demobilized and reintegrated into his or her community. To date, a total of 472 children and youth have been discharged from the military since the signing of the joint action plan. Action has also been taken against members of the armed forces who have violated recruitment rules and regulations. The government army is fully committed to getting itself removed, in the near future, from the list of parties that recruit or use children contained in the report of the Secretary-General on children and armed conflict.

M. Protection and promotion of women's rights and security

38. In Myanmar, women constitute more than half the population (26.59 million of the country's 51.41 million). Article 348 of the State Constitution stipulates that no citizen of Myanmar shall be discriminated against on the basis of race, birth, religion, official position and status, culture, gender or wealth. Laws, bylaws and arrangements are in place to enable women to enjoy their rights and opportunities to the fullest extent.

39. Pursuant to the provisions of the Beijing Declaration, the Myanmar National Committee for Women's Affairs is playing a vital role in the overall development of women's lives and the implementation of the Convention on the Elimination of All Forms of Discrimination against Women and the Beijing Platform for Action.

40. Marking a recent development in this area, Myanmar has signed the Declaration of Commitment to End Sexual Violence in Conflict at the Global Summit (A/68/633, annex, enclosure), launched in London in June 2014.

N. Opening of an office of the Office of the United Nations High Commissioner for Human Rights in Myanmar

41. As part of its efforts to promote voluntary cooperation with the United Nations, in November 2012 Myanmar, through a press release issued by its Information Committee, stated that it would continue to hold talks over the opening of an office of the Office of the United Nations High Commissioner for Human Rights (OHCHR) in the country.

42. Accordingly, Myanmar has been engaging in talks with OHCHR since then. A standard host country agreement was transmitted to the Government of Myanmar through its Permanent Mission in Geneva by OHCHR in November 2012. It has been the intention of Myanmar to focus its cooperation with OHCHR, at the initial stage, on the technical assistance it sorely needs to enhance its efforts to promote and protect human rights in the country.

43. At this time of transition, Myanmar is in dire need of technical assistance from OHCHR to strengthen the independence and capacity of the National Human Rights Commission and the parliament, as well as for the process of possible ratification of the remaining core international human rights instruments. Technical assistance is also needed for the government line ministries to follow up on the recommendations arising from the universal periodic review, for advocacy involving civil society and for the forthcoming universal periodic review process.

44. In September 2013, Myanmar sent a counterproposal containing the technical cooperation mandate to OHCHR. The proposal reflected the views and comments of the respective ministries. OHCHR is, however, insisting on the full mandate.

45. Despite its consistent opposition to the country-specific mandate, Myanmar has continued to extend full cooperation to the Special Rapporteur on the situation of human rights in Myanmar and to avail itself of the good offices of the Secretary-General and his Special Adviser on Myanmar. Since the Special Rapporteur has already been mandated to monitor and report on the human rights situation in the country, Myanmar does not see the need to allow the additional mandate of the OHCHR country office. A dual-monitoring mechanism under the same mandate should not be warranted for any reason, especially for a country making positive changes.

46. The opening of an office of a United Nations entity must naturally be based on shared goals and on mutually convenient terms and conditions. The voluntary commitment of Myanmar largely depends on a constructive response from OHCHR to the counterproposal submitted in September 2013.

47. Despite this difference of opinion on the mandate of the Office, Myanmar is cooperating with OHCHR on the ground. For instance, at least three officials from the OHCHR Bangkok office are present in Myanmar with the Government's permission and are making frequent visits to Rakhine State.

VI. Developments in Rakhine State

48. At a time of democratic transition, when society has opened up with liberalized policies and free social media, Myanmar has had to confront the unfortunate challenge of communal violence in Rakhine State. That violence, sparked by a brutal crime, has brought misery and caused the loss of lives and homes to both of the communities involved. The violent clashes between the two communities are rooted in a long history of mistrust involving issues of immigration and competition over resources.

49. The Government fully recognizes the need to address the issue so as to avoid undermining the ongoing reform process. To that end, the Central Committee on the Implementation of Peace and Stability and Development in Rakhine State was established on 13 March 2013, with a vice-president acting as its Chair. The high-level committee is overseeing efforts to address the urgent needs of the affected communities.

50. The Government has been providing humanitarian assistance to both communities, without discrimination and in cooperation with the international humanitarian community. The central and local authorities have been assigned to ensure security, rule of law, humanitarian access and reconciliation in the State. The

United Nations aid agencies and international aid groups are now resuming their development, humanitarian, health-care and education programmes in Rakhine State. On 9 September 2014, Médecins sans frontières signed a new memorandum of understanding with the Ministry of Health to re-engage in Rakhine State. A mechanism of the Emergency Coordination Centre that includes representatives of local authorities, both communities and aid agencies has also been set up to promote the facilitation, coordination and transparency of all humanitarian assistance.

51. It is most important to make sure that humanitarian aid goes to both communities without discrimination so as to avoid local anxieties and to pave the way for the smooth functioning of aid agencies. Providing development assistance and better infrastructure will not only create livelihood opportunities for both communities but also win the hearts and minds of the local population, thereby changing their perception of aid agencies. Fulfilling the needs of both communities, including through development aid, education and health services, is essential for bringing peace and stability to the area. To this end, Myanmar welcomes the new approach, which focuses on the development of Rakhine State and, in parallel, on the unbiased provision of humanitarian assistance.

52. The root cause of tensions in Rakhine State is lack of development. Better infrastructure, such as roads, bridges, water and electricity supply, communication and transportation, are essential for the development of the State. As such, the Government is investing, jointly with private entrepreneurs, in development projects in the region. Various urban development projects in and around Sittwe, an electricity project and an industrial zone in Ponnagyun township and the Kyaukphyu special economic zone are now under construction. All major cities in Rakhine State will have access to electricity by December 2014. The completion of these projects will provide employment opportunities and better livelihoods for everyone living in Rakhine State.

53. The Government has already drafted an action plan for Rakhine State, having sought the views of the communities, United Nations agencies and non-governmental organizations, including international non-governmental organizations. The action plan deals with major issues relating to security, stability and the rule of law; rehabilitation and reconstruction; the matter of citizenship in respect of Bengalis; socioeconomic development; and peaceful coexistence. The plan of action is designed to rebuild Rakhine State as a harmonious, peaceful and prosperous place.

54. A pilot citizenship verification project was launched in Myay Pon township to screen out illegal immigrants. Individuals who meet the requirements of the 1982 citizenship law will enjoy their due rights. Hundreds of people, together with their family members, have already been granted citizenship and benefitted from the pilot project. The international community should avoid the sensitive issues of terminology and focus on how to help bring about peace, stability, harmony and development for all people in Rakhine State. International partners could best help Myanmar in addressing the issue by providing not only humanitarian assistance but also much-needed development assistance for both communities. Such projects will be expanding to other areas in Rakhine State.

VII. Conclusion

55. At this time of rapid democratic transformation, Myanmar faces complicated and delicate challenges to establishing peace and stability while struggling for inclusive development to meet the high expectations of the people. Despite the limited capacity of the country, these challenges are not insurmountable. Myanmar cannot afford to allow any challenges to disrupt the reform process under way. Myanmar calls upon the international community to understand the complex challenges faced by the country in perspective and to continue to support the efforts of Myanmar to overcome them.

56. Myanmar has changed and continues to change in the right direction. Unparalleled progress has been made in promoting human rights and democratization. Notwithstanding the remaining challenges, most major concerns related to human rights have already been addressed to a large extent. In the light of these developments, the country-specific issue of Myanmar should not remain under scrutiny by the General Assembly, which is supposed to take up the issue of grave human rights concerns. It will set a bad precedent to exert continued political pressure on a country that has made dramatic positive changes. This is not the time for the United Nations to expand its monitoring of the country. On the contrary, now is the time to remove the issue from the agenda of the Assembly and to end all the mandates on Myanmar, which have stretched over two decades. Myanmar has entered a new era and should now be viewed with a different mindset and from a new perspective.